

REMARKS

Claims 9, 11, 13-16, 18 and 20-22 are pending in the present application.

Claims 1-8, 10, 12, 17 and 19 have been canceled without prejudice.

Claims 9 and 20 have been amended to recite the presence of a chain transfer agent in the polymerizable composition. Support for this amendment can be found in canceled claim 10.

No new matter has been added by way of the above-amendment.

III Prior art based issues

The following Rejections are pending:

- (A) Claims 9, 11, 13 and 15-22 are rejected under 35 U.S.C. 103(a) as being obvious over Caster et al. (US 7,025,851); and
- (B) Claims 9, 11, 13, 14, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Endo (EP 423521).

Applicants respectfully traverse Rejection (A) and Rejection (B).

Applicants respectfully submit that the claimed invention as described in the March 29, 2007 Amendment is patentable over the cited references. However, in order to advance prosecution, Applicants have amended claims 9 and 20 to recite the subject matter of claim 10, a claim not currently under rejection. As such, both Rejection (A) and Rejection (B) are rendered moot.

IIII Obviousness-type Double Patenting

Claims 9-22 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. 10/567,782 ("the '782 application") in view of Caster et al. Applicants respectfully traverse.

First, Applicants note that the '782 application has been patented. The current patent number is 7,273,915 (hereinafter "the '915 patent"). Accordingly, the provisional status of this rejection is effectively removed.

In response, Applicants co-file herewith a Terminal Disclaimer over the '915 patent.

In legal principle, the filing of a TD simply serves the statutory function of removing the rejection of obviousness-type double patenting, and does not raise a presumption on the merits of the rejection. It is improper to view the simple expedient of "obviation" as an admission or acquiescence on the merits. *Ortho Pharmaceutical Corp. v. Smith*, 22 USPQ2d 1119, 1124 (Fed. Cir. 1992) citing *Quad Envtl. Technologies Corp. v. Union Sanitary Dist.*, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-95 (Fed. Cir. 1991).

Based on the foregoing, the obviousness-type double patenting rejection is rendered moot.

(III) Information Disclosure Statement (IDS)

The Examiner is requested to forward a signed copy of the PTO/SB08 form that was enclosed with the September 26, 2007 IDS in the next communication.


In view of the above amendment, applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Garth M. Dahlen, Ph.D., Esq. Reg. No. 43,575 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: November 14, 2007

Respectfully submitted,

By  #12525
Marc S. Weiner
Registration No.: 32,181
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Enclosed: Terminal Disclaimer over U.S. Patent No. 7,273,915